In the High Court of Judicature at Madras

Dated: 04/03/2004

Coram

The Hon'ble Mr. Justice K.P.SIVASUBRAMANIAM

WRIT PETITION No.14879 of 1994

S.Meena .. Petitioner.

-Vs-

1. The State of Tamil Nadu,
represented by its Secretary,
Home Department,
Fort St. George,
Madras - 600 009.

2. The Director General of Police,
D.G.P.Office,
Mylapore,
Madras - 600 004.

3. The Collector of Madras,
Chepauk,
Madras-600 005.

4. The Personal Assistant (General)
to the Collector of Madras,
Chepauk,
Madras-600 005.

5. The Commissioner of Police,
Egmore,
Madras-600 008.

6. The Inspector of Police,
E-2, Royapettah Police Station,
Madras-600 014.

7. Chandrasekaran

8. Nicholas

9. Chandran

10. Nagarajan

11. Ganesan

12. The Superintendent,
Government Royapettah Hospital,
Madras-600 014. .. Respondents.

Petition filed under Article 226 of the Constitution of India
praying for the issue of a writ of mandamus as stated therein.

For petitioner : Mr.C.Vijayakumar.

For respondents 1 to 6 : Mr.V.Raghupathy,
Govt. Pleader.

For respondents 7 to 11 : Mr.S.Manimaran

:ORDER

The petitioner, the mother of one Wilson who allegedly met with his death while in custody of the Police, seeks for the issue of a writ of mandamus to direct the first respondent to pay a sum of Rs.3,00,0 00/- as compensation for the custodial assault, torture and murder of Wilson and to direct respondents 1 to 5 to prosecute respondents 7 to 11 for the said offences and to direct respondents 1,2 and 5 to initiate proper disciplinary action against them and for further reliefs.

2. The petitioner contends that she is a Class IV employee in the Postal Department and her husband had died 11 years back. He had one daughter and the deceased son Wilson. Her son was doing screen printing and he was 24 years old at the time of his death. On 21.6.1993 when she asked her son to have his dinner,he told her that he would return soon and went out. But he failed to return till 10.00 P.M. The petitioner and her daughter went to sleep after keeping food for her son. Subsequently she was informed by one Nalini who is the sister of the landlord of the petitioner and whose house is situate at Gangai Amman Kovil Street, that on the night of 21.6.1993 on hearing some shouting in front of her house, she came out of the house and saw respondents 7 to 11 brutally attacking the petitioner's son Wilson. The said police officials surrounded Wilson and caught hold of him near the water tap situated at Gangai Amman lane and tied his hands with lungi. Wilson was attacked with long knife and grievous injuries were caused. The said Nalini and other residents nearby were direct eye-witnesses to the brutal attack. Wilson cried that he was innocent and he has not committed any mistake. Even after that police officials did not spare him and they continued attacking him all over his body causing grievous injuries. He was also abused in vulgar language and was continued to be attacked. While he was lying on the road the police officials kicked him with their boots on his chest and abdomen and then he became unconscious and was dragged on the road. The police officials caused cut injuries on the leg of Wilson as well as all over his body attacking him with the handle of the knife. This happened for about half-an-hour in the open street and after that he was taken to the Police

Station. According to the petitioner, she was unaware of the incident as she and her daughter were sleeping. Her landlord's son Senthil knocked at the door on the night of 21.6.1993 and informed the petitioner of the brutal assault on her son. She was also informed about his having been taken to Royapettah Police Station. One Mohan, petitioner's son's friend also came to the house and told that he had seen the police dragging her son to the Police Station.

3. The petitioner thereupon requested Mohan to help her for taking her son on bail from Royapettah Police Station. He left immediately stating that he would go to the Police Station and return and inform her. But for a long time he did not herefore, she obtained the help of Dampachari, brother of the petitioner's landlord and went to Royapettah Police Station at 2.30 A.M. 22.6.1993. She waited outside while Dampachari went inside and enquired. He returned back and said that the police officials did not reveal anything and that he could not find the petitioner's son. Dampachari asked her to return to her house and assured that they would be able to get further information in the morning. Therefore, she had to return to the house. At about 4.00 A.M. on 22.6.1993 the said Mohan again came back and he told the petitioner that he saw Wilson at the Royapettah Police Station at 1.30 A.M. He was lying in one corner of the Police Station and that he saw cut injuries on both the legs and abrasions all over his body. He was also shouting for help and requested Mohan to take him to hospital. After a short while again he went to the Police Station. The Inspector of Thousand Lights Police Station, came there and when he saw the injured person, he shouted at the Constables and asked them to take Wilson to the hospital. At 2.00 A.M. Wilson was taken to Royapettah hospital in a Cycle-Rickshaw by two constables followed by Mohan. In the hospital, certain stitches were put on the cut injuries on both legs of Wilson. X-Ray was also taken and Wilson complained that he was experiencing acute pain on his private parts, abdomen and chest and he was unable to bear the pain. However, the police did not bother to give proper treatment or have any concern about the critical condition of Wilson. At 3.30 A.M. he was brought back to the Police Station in a Cycle-Rickshaw. Though Mohan followed Wilson to the Police Station, he was not allowed inside the Police Station and he saw the seventh respondent in Police Station. When Mohan had informed the petitioner of the said facts, the petitioner and her daughter cried and requested Mohan to help them to go to the Police Station. As they were informed by Mohan that Police will not allow them, they went only at 5.30 A.M. along with Dampachari. Dampachari informed that Wilson was lying like a snail with both legs and hands bandaged. He was unable to stretch his legs and hands and when Dampachari tried to make him sit, Wilson asked for water and Dampachari went out and brought Limca and they gave Limca to Wilson. The petitioner cried and the police personnel shouted at her and asked them to leave. They had to come out of the Police Station and they were not allowed to be with Wilson. Therefore, the petitioner and Dampachari returned to the house at 6.30 A.M. She requested Dampachari to go and see Wilson in the Police Station. She also went to her office to arrange for bail with the help of co-employee at about 8.30 A.M. But while she was in the office Senthil, Dilli and Sankar came to the office and informed her that her son had died in the Police Station at about 9.00 A.M. and that his body had been taken to the Royapettah Hospital. When she went to the hospital

there was a huge crowd from her area. Dampachari was also present there. On 22.6.1993 at about 1.00 p.m. she sent a telegraphic complaint to the Hon'ble Chief Minister informing about the illegal torture and death of her son. She demanded a detailed probe and suspension of the policemen. The petitioner further stated that in view of the happenings, the public in the area gathered in front of the Police Station and demanded action against the guilty police officials. But to the shock and surprise of the petitioner till date, no worthwhile action had been taken against guilty persons.

4. The petitioner further states that after postmortem, Wilson's body was handed over at 7.00 p.m. on 22.6.1993. Several journalists came to the petitioner's house and took photographs and when the bandages were removed they saw several stitches on Wilson and on his private parts. There were abrasions all over his body and his abdomen was contused. The right leg thigh was fissured. It is further stated that Wilson's funeral took place on 23.6.1993 at about 4.00 p.m. The shops in the area were closed condemning the police atrocities and more than 1000 people participated in the funeral and more than 100 policemen were posted for bandobust. The petitioner states that several journals and papers published the news of death of Wilson and the police wantonly and falsely fed news to the press branding the petitioner's son as a rowdy in order to suppress the custodial death. The petitioner further states that her son had no previous bad antecedents. The petitioner further states that respondents 7 to 11 were the main culprits who had brutally attacked Wilson. It was a blatant violation of human rights and police authorities had totally suppressed the cause of death. When she approached the hospital authorities and requested for a certified copy of post-mortem certificate she was not given a proper reply. Therefore, she sent a registered letter on 11.10 .1993 to the Assistant Medical Officer to issue a certificate of post-mortem report. However, the authorities failed to issue the certificate.

5. The petitioner further submits that even though the fourth respondent, Personal Assistant to the Collector of Madras, conducted a enquiry under Section 176 Cr.P.C. and under Clause 145 of the Police Standing Order, till this date, the assailants have not been prosecuted. In spite of the petitioner having approached respondents 3 and 4 to know about the stage of the enquiry, she was not given any information.

6. The petitioner further submits that Wilson was her only son and her husband having died 10 years back, she and her daughter lost the only support and they were facing extreme mental and physical sufferings. Her son was doing screen printing work and was earning about Rs.2,000/- per month. Therefore, the Government was liable to pay compensation. None of her complaints and representations had been enquired into and there was absolutely no positive response from the respondents. Hence, the above writ petition.

7. In the counter filed by the Commissioner of Police, Greater Chennai, on behalf of respondents 1 to 7, it is contended that an enquiry was conducted under Clause 145 of the Police Standing Order by the fourth respondent and an enquiry report was submitted on 19.8.1994, directing to launch a criminal prosecution and also simultaneous departmental action

against the five police officials who were involved in the case. The Government also sanctioned Rs.50,000/- to the petitioner as compensation. It is further stated that as per F.I.R. in Crime No.860 of 1993 on 21.6.1993 at 23.30 hours, the crew of P.T.C. bus gave a complaint to E.2 Royapettah Police Station stating that four persons armed with deadly weapons were creating disturbances near Ajantha hotel. Immediately constable Ganesan along with Sub-Inspector of Police, E.2 Police Station and party rushed to the spot. On seeing the Police party, the unruly elements ran towards Gangai Amman Kovil Street, one among them being Wilson. He jumped over some iron materials and sustained injuries. When the police went near him, Wilson attempted to assault them with a long 'Aruval' of 2-1/2 feet length which he had with him. In order to protect themselves, the police used minimum force to overpower him, seized the 'Aruval' and brought him to the Police Station at 01.00 hours. Ganesan registered a case in Crime No.860 of 1993. The accused was found to have sustained injuries and had also consumed alcohol. Therefore, he was sent to Royapettah Hospital for treatment and for obtaining drunkenness certificate. He was given treatment and a drunkenness certificate was also issued. Wilson was lodged in the lock up on 22.6.1993. At about 10.00 hours he complained giddiness and therefore, he was sent to the hospital through P.C.2715. On his arrival at the hospital he was pronounced as dead by the Medical Officer.

8. In terms of the report of the fourth respondent, the departmental action was initiated against the concerned police personnel and criminal prosecution was also initiated before X Metropolitan Magistrate, Saidapet. Therefore, the allegation that no action had been taken against the police officials, was not correct. The case was committed to the Sessions Court, Chennai, and on enquiry by the VI Additional Court, Chenai, by judgment dated 5.8.1998 the accused were acquitted of the charges. The Public Prosecutor of the High Court had opined that it was not a fit case for filing an appeal. Thus all the necessary actions have been taken properly. Therefore, the allegations to the contra were not admitted and there was no necessity to spread any false news against the petitioner's son.

9. It is further stated that departmental action was initiated against S.Chandrasekaran, S.Leavance, N.Chandran, s.Ganesan and M. Nagarajan. They were charged under Rule 3(b) of the Tamil Nadu Poice Subordinate Service (D & A)Rules for the criminal misconduct in having caused death of Wilson. The Sub Inspector and four others were awarded with the punishment of reduction in pay by two stages for two years with cumulative effect on 2.6.1999 by the Commissioner of Police. The punishment was given effect to and on the completion of the period of punishment promotion has also been awarded.

10. The said officials also filed O.A.Nos.3649, 3650, 3678, 4147 and 4150 of 1999 before the State Administrative Tribunal. The State Administrative Tribunal allowed all the applications on 4.10.2001 and set aside the impugned orders and remitted the same back to the Commissioner of Police for reviewing carefully in the light of the judgment of the Supreme court in M.PAUL ANTONY v. BHARAT GOLD MINES LTD. and in view of the

acquittal given by the VI Additional Sessions Judge. The question of filing an appeal against the order of the Tribunal was examined by the Government and after due consideration it was felt that it was not a fit case for appeal. It is further stated that the Review Application Nos.31 to 35 were filed by the said officials and the Tribunal by its order dated 22.1.2002 modified the judgment cancelling earlier orders of remitting back to the Commissioner of Police for review. As such the orders of punishment which were earlier awarded departmentally, have been set aside. In consultation with the office of D.G.P. the punishments awarded earlier were cancelled and the reduction of pay already given effect to, to the said individuals were ordered to be restored in the position which prevailed at the time before implementing punishment. Hence, there were no merits in the writ petition and the same be dismissed.

11. S.Chandrasekaran, the seventh respondent has filed a counter on behalf of himself and respondents 8 to 11. According to him, the various allegations contained in the affidavit filed in support of the writ petition, were false. On 21.6.1993 at 11.45 p.m. while he himself and respondents 8 and 9 were ready to leave the Police Station, the 11th respondent informed him that the crew of P.T.C. bus had stopped the bus with passengers in front of the Police Station and had informed him about four or five unruly elements armed with 'patta' knives were terrorising the public and indulging in violence near Ajantha hotel. 11th respondent requested respondents 8 and 9 to assist him in controlling he violence in the public road and to apprehend the culprits. The Inspector of Police and the Sub Inspector attached to the law and order wing were not available in the Police Station. When they reached there they found four persons including Wilson armed with 'patta' knife and in a drunken mood were terrorising and indulging in violence near Ajantha hotel. As they tried to apprehend them, all the four persons ran towards different directions with their weapons. He stood at the scene and was pacifying the public who had gathered there complaining about atrocities of the rowdy elements. The Police could apprehend only one person viz., Wilson with his knife and brought him near Ajantha Hotel. He was informed by the other policemen, he ran into Gangai Amman Kovil Street and he fell on the old tin scrap materials and iron rods and sustained minor injuries. When the policemen went near him, he threatened the police to assault them. However, he was overpowered and caught. At about 1.00 a.m. all of them returned to the Police station. As he found some injuries on the legs and hands of Wilson, he asked the 11th respondent to send Wilson to the hospital. Thereafter, he and respondents 8 and 9 left the Station on duty. He again came back to the Royapettah Police Station and went to his house. He came to know from the 11th respondent that a case has been registered in Crime No.860 of 1993. 11th respondent had also sent the injured Wilson to the Government Royapettah hospital for treatment. He was treated by Dr.Khadri, C.M.O. and drunkenness certificate was issued by Dr.Thirunavukkarasu. At that time Wilson was in good condition and was speaking with the police officials. He also came to know that about 7.00 A.M., on the following day (22.6.19 93), Wilson was in good condition. At about 7.30 A.M. Anandraj, Sub-Inspector had enquired about the night incident. At about 8.00 A.M. Sivaraman, Inspector (L & O) also enquired Wilson pertaining to Crime No.860 of 1993 and also got the names of the other accused included in the night

incident near Ajantha hotel. At about 9.30 a.m. one Dhambachari along with another Constable who were known to the petitioner came to the Police Station for the release of Wilson on bail. However, the Sub Inspector informed them that he has to send Wilson for remand and asked them to move for bail later. At about 10.00 a.m. Anandraj, Sub-Inspector informed Sivaraman that Wilson felt giddiness and Anandraj sent Wilson to the Government hospital for treatment. When Wilson arrived at the hospital, he was declared dead by the Doctor. The matter was informed to the higher officials by the Inspector of Police. Sivaraman also personally informed through a report to the fourth respondent for the purpose of conducting an enquiry under Clause 145 of P.S.O.

12. The deponent has denied the allegations in the affidavit that respondents 7 to 11 were involved in the custodial assault, torture and murder of petitioner' son. The deponent has also referred to the criminal proceedings which ended in acquittal and the departmental proceedings which also ended in their favour as already referred to in the counter filed by the Commissioner. The deponent contends that the entire allegations made by the petitioner in the affidavit were baseless and motivated. In the evidence before the Criminal Court the alleged presence of Nalini, Kumar, Rnganayaki, Maragatham and Gajendran were found to be false though they were examined as prosecution witnesses. They did not support the case of the petitioner. The deponent was not personally aware of the allegations stated in paragraph Nos.3 (f) and 3(g) in the affidavit. He had left the Police Station along with respondents 8 and 9 for apprehending another accused while the Law & Order Police took charge of the accused. The allegation that the victim had been brutally attacked with knife and was murdered by police officials was false and denied. The post-mortem certificate was clear to the effect that injuries found on the body of the petitioner' son were simple in nature and the same could not have caused the death. Respondents were not responsible for the death of the petitioner's son. The petitioner was making false and exaggerated allegations.

13. Learned counsel for the petitioner made elaborate submissions on the facts and circumstances which led to the death of the petitioner's son and contended that the facts stated in the affidavit relating to the arrest of the deceased and the happenings in the Police Station have not been effectively denied. Even going by the facts stated in the counter affidavit filed on behalf of the respondents 7 to 11, though the victim was said to have sustained some injuries by falling over scrap and iron materials while he was chased by the police even before he was brought to the Police Station, it is clearly stated that victim was in good condition and he was speaking with the police officials. Therefore, it was the responsibility of the respondents to explain as to how the victim had sustained fracture injuries met with his death.

14. Learned counsel further contends that though it is true that the individual respondents were acquitted by the Criminal Court and generally found not guilty in the departmental proceedings also, it was obvious that the witnesses have been won over by the respondents being police officials and the witnesses had been made to turn hostile. A perusal of the report of the P.A. to the Collector dated 28.1.1994 would reveal the correct

facts relating to the incident. Learned counsel contends that the report had spelt very clearly the manner in which the deceased had met with his death due to the high-handed action of the party/respondents and how they had indulged even in manipulation of the records and obtained false medical certificates as though the victim was intoxicated. I am not referring to the submissions of learned counsel for the petitioner in the context of the said Report in order to avoid repetition and I will deal with the findings in the Report subsequently. Learned counsel further contended that the entire circumstances clearly establish that the victim had sustained fatal injuries as could be seen from the post-mortem report only due to man-handling, torture and violence while in police custody. The victim was the only son of the petitioner who herself is a widow with a daughter to look after. Thus the petitioner had lost her only hope for her future life and hence requires to be adequately compensated. Reliance was also placed on some of the rulings of the Supreme Court in support of maintainability of the claim for compensation in a writ proceeding.

15. Mr.V.Raghupathy, learned Government Pleader contends that the Government had done everything in a proper and impartial manner and had taken prompt follow-up action. On receipt of the report under Clause 145 of P.S.O., both departmental as well as Criminal proceedings were set in motion against the assailants. But the nature of evidence was such that the ultimate decision in both the proceedings went in favour of the alleged assailants. Even so, the petitioner was paid a sum of Rs.50,000/- as compensation. Learned Government Pleader also fairly stated that any fair compensatio n could be fixed by the Court and he would submit that even though strictly speaking the petitioner should be directed to go before the Civil Court, in his assessment, a further sum of Rs.50,000/- will be reasonable.

16. Learned counsel for respondents 7 to 11 after reiterating the factual submissions in the counter, submitted that the allegations of assault on the victim while in custody was totally false. The injuries sustained by the victim were only due to accidental fall on the metalic debris of building materials while he was running away when he was chased by the police. The medical evidence relating to the nature of the injuries clearly establishes the version of the respondents. The respondents were only discharging their lawful duty while apprehending the victim, who behaved like a rowdy in a public place creating law and order situation. Both the departmental proceedings and the prosecution before the Criminal Court had ended in their favour and they had been acquitted honourably. Hence the above writ petition has to be held as infructuous. The evidence of the Doctor shows that the victim suffered from adverse heart condition. Therefore, it would not be proper to blame the respondents for unexpected death of the victim.

17. Learned counsel further contended that the entire episode of assault while in custody was totally false as found in the evidence before the Criminal Court. The statement recorded in the enquiry under Clause 145 of P.S.O. was under threat and coercion and the report had been rendered in a biased manner. In short, there was absolutely no basis for the allegation relating to the alleged assault or negligence in giving treatment to the victim. They were only performing their lawful duties in a perfectly legal

manner and the version of the law-breakers deserve to be rejected. The verdict in the Criminal Court and the departmental proceedings have established their innocence.

18. I have considered the submissions of both sides, perused the relevant records inclusive of the report under Clause 145 of P.S.O.

19. There is no dispute over the fact that the victim was in police custody when he died. Even according to the police at about 12.00 midnight on 21/22-6-1993 the victim was apprehended and taken to the police station at 1.00 A.M. He died at about 10.00 A.M. on 22.6.1993. In between the said few hours what had happened is the issue which requires decision.

20. The version of the petitioner/mother, is that her son is a law abiding citizen and was not involved in any crime at any time till then and that she was informed by one Nalini that at about 10.30 p. m. on hearing noise, he came out of her house at Royapettah. She had heard shouts and saw respondents 7 to 9 and the victim was being brutally attacked by them. The hands of the victim were tied with " lungy" and he was repeatedly beaten and kicked even while the victim wailed repeatedly claiming to be innocent and that he had not done anything wrong. Even so he was repeatedly beaten and was subjected to vulgar abuses. He was alleged to have been assaulted for about half-an-hour and taken to Royapettah Police Station. Assault on him was alleged to have continued at the Police Station also. Though the petitioner claims to have gone to the Police Station with one Dhampachari and waited outside the Police station, she was informed by Dhampacahri that the victim was not to be found in the Police Station. At 4.00 A.M. she was informed by Mohan that he had seen the victim in the Police station at about 1.30 A.M. and he was lying in one corner of the Police Station with cut injuries and the victim had requested Mohan to take him to the hospital. Thereafter, he was taken to Royapettah hospital in a Cycle Rickshaw by two constables. Again he was brought back to the Police Station. At about 5.30 A.M. the petitioner went to the Police Station along with Dhampachari and found the victim in a very bad condition. They were threatened by the police to leave the place and the petitioner had to go her house. In the morning she received information that her son had died at about 9.00 A.M.

21. The version of the Police is that at about 11.45 P.M. on 21.6.1993, information was received from the crew of a P.T.C. bus which was parked outside the Police Station, that they had informed the Police that unruly elements with "patta" knives were terrorising the public near Ajantha hotel and therefore, they proceeded to the spot at midnight. They saw four persons including the victim, were armed with 'patta' knives and in a drunken mood were terrorising the public. On seeing the police, they tried to run away and the police were able to apprehend only the victim while others ran away. He ran towards Gangai Amman Kovil Street and fell on old tin scrap materials, iron rods and thus sustained minor injuries. He was overpowered and taken to the Police Station. The seventh respondent, who had alone filed the counter would further state that he went away and returned only at 5.30 A.M. and again went to the house. He ha d gathered details from the 11th respondent who had informed him about registering the case and of having given

treatment to the victim at the hospital at 2.15 A.M. The victim was in good condition in the morning and it was only at 10.00 A.M., the victim complained giddiness and he was sent to the hospital. But when he was taken to the hospital he was declared dead by the Doctor.

22. I have given utmost consideration of the submissions made by both parties and analysed the facts with the care and seriousness which nature of the issue deserves and I am inclined to find that the party/respondents are squarely responsible for the death of the victim for reasons as elaborated in the discussion below:-

23. It is true that the Criminal Court found that the charges against the police officials were not established. The said findings by the Criminal Court also resulted in setting aside even the minor punishment which was awarded against them in the departmental proceedings. A perusal of the evidence before the Criminal Court shows that all the witnesses connected with the incident, direct and circumstantial, had turned hostile. The proceedings thus sadly reflect the prevailing pitiable and shocking level of the criminal justice system in our country. The Supreme Court in some of the recent judgments, had expressed their dismay about the situation arising out of the witnesses turning hostile. It is a shameful fact that more than 75 per cent of the Criminal cases end in acquittal mainly due to the apathy of the witnesses to come to the Court to give evidence or the witnesses turning hostile or due to unreasonable delay in the trial. The witnesses turn hostile due to several factors such as threat, coercion, inducement by several means, begging for mercy, bribery etc. The resultant situation is shocking murderers, dacoits, thugs and rapists who indulge in day-light atrocities go scot-free. With the abolition of the committal procedure, prosecution of erring witness for perjury has become impossible. It is high time that the framers of Criminal law envisage a system by which fearless atmosphere is ensured for witnesses and obtaining statements from witnesses on oath at the earliest point of time before a judicial forum be made mandatory so that action for perjury, false evidence and suppression of evidence could be taken against them. The prevailing proportion of acquittal is a mockery of enforcement of criminal law and maintenance of law and order to the frustration of honest police officials who risk their lives to track down the offenders. But ironically in this case, the social malady of witnesses turning hostile is used by the police personnel as a shield to protect themselves from any action against their own gruesome and inhuman conduct.

24. The Supreme Court and the various High Courts being alive to this scenario, have repeatedly held that the degree of proof, quality and appreciation of evidence in Criminal proceedings are different from departmental or civil proceedings. While in a criminal proceeding, proof beyond reasonable doubt is mandatory in a civil or departmental proceeding what is required is to establish preponderance of probabilities. In a criminal proceeding, burden of proof is always one sided namely, on the prosecution except in rare offences protected by statutory presumption. But in civil proceedings the burden is always mutual and shifts from one to the other. The burden is rarely one sided such as presumptions specifically envisaged under the specific statutes. Therefore, in this writ petition,

which is a petition for claim of compensation, reference to the result of the criminal proceedings would be irrelevant. It would not be prudent to be carried away by the fact of witness having turned hostile before the Criminal Court. The only emphasis by learned counsel for the party/ respondents is that they have all been acquitted by the Criminal Court. In this case, fortunately for the petitioner, there is a Report by the P.A. to the Collector of Madras under Clause 145 of P.S.O., on an enquiry which was directed by the Government to be conducted. The value to be attached to such report in civil proceedings or in a petition under Article 226 of the Constitution of India has been clearly spelt out by the Supreme Court in KHATRI (IV) v. STATE OF BIHAR (1981 (2) S. C.C., 493). In that case, the petitioners who were under-trial prisoners moved the Supreme Court under Article 32 of the Constitution alleging that they were blinded by the members of the State Police and thus their right to life was violated. Under the provisions of the Police Act, the State Government directed a Senior Police Officer to investigate into the matter. The Officer submitted his report to the Government. In the writ proceedings the said report was called for. At that stage the production of the same was objected to on the ground that such records are protected under Sections 162 and 172 Cr.P.C. With reference to the objection relating to Section 162 Cr.P.C., the Supreme Court held that the said provision was enacted for the benefit of the accused and that the provisions will not apply to civil proceedings or proceedings under Articles 32 or 226 of the Constitution of India and can be produced and used in evidence in a writ petition. As regards the objection with reference to Section 172 Cr.P.C. also the same was rejected and the Supreme Court held that the bar against production and use of the Case Diary under Section 172 was intended to operate only in an inquiry or trial for an offence and that even the said bar was only a limited one. The said bar was also held to have no application where a case diary was sought to be produced and used in evidence in Civil proceedings or in a proceeding under Article 32 or 226 of the Constitution of India.

25. The enquiry and the report of the P.A. to the Collector as ordered by the Government would in fact stand even on a better footing considering that it is neither a statement before the Police Officer, nor a case of Police Diary of investigation proceedings and hence does not suffer any of the inhibitions of Sections 162 and 172 Cr.P.C. It is an official record and a report by an independent official of the Government pursuant to the enquiry ordered by the Government and hence perfectly admissible in this proceeding under Article 226 of the Constitution of India.

26. The attempt on the part of the respondents to persuade the Court to ignore the said report as biased or as a product of pressure and coercion, is unsustainable and such a defence is not expected of Police officials to raise such baseless contentions for the following reasons:-

(i) The respondents do not say as to who brought any pressure on the official who conducted the enquiry and what was the nature of the pressure or coercion.

(ii) Likewise, regarding bias also, nothing is stated about the

motives of the concerned officials much less as to how the said official had any personal bias against all or any one of the police officials who were indicted.

(iii) If there was any truth or even apprehension in the minds of the respondents regarding the bona fides of the said report, the respondents could have and would have certainly taken up the issue with the higher officials or the Government, questioning the grave findings rendered against them which were sure to affect their future. The respondents have not contended before me of having taken up the issue with higher officials or the Government questioning the findings rendered by the official nor have they complained of any bias or pressure on the said official. No reference has been made to any further proceedings by any competent authority disagreeing with the evidence tendered before the Officer, nor the findings rendered thereon.

(iv) On the other hand, the Government agreed with the findings and took steps to proceed against the respondents departmentally. It is also pertinent to note that in the separate departmental enquiry also they were also found guilty which were however, set aside purely as a result of acquittal by the Criminal Court. It is settled proposition of law that acquittal by Criminal Court is irrelevant for the Departmental proceedings and yet the Government for reasons best known to them did not pursue further action.

27. Therefore, the criticism of the Report by the party/ respondents cannot be accepted. In view of the judgment of the Supreme Court as cited above, the said Report is certainly admissible and is of considerable value for the purpose of this petition. The evidence recorded and the information gathered in the said enquiry is valuable being materials gathered at the earliest point of time., by an independent official. Many witnesses who have been examined other than the mother of the victim/petitioner, are all independent persons and they are not interested in the petitioner or the victim apart from the fact that they are also aware of the grave risks involved in deposing against the local police officials. Nor can they have any axe to grind while supporting the case of the petitioner who is a very poor person nor the victim who is accused of having behaved in an unruly and drunken manner. They are natural witnesses who are living around the area and their spontaneous statement at the earliest point of time to a responsible public official, his findings thereon deserve consideration as pointed out by the Supreme Court in the judgment cited above. It is true that the said findings cannot be treated as conclusive, but the point to be borne in mind is that the learned counsel for the party/respondents was unable to make any dent on the clear and categoric findings and observations except for making bald accusation that the report was biased and the witnesses were under threat and coercion. I have already held that such allegations are without any basis and have not been substantiated.

28. A perusal of the report reveals that most of the facts alleged in the affidavit of the petitioner are substantially confirmed by the witnesses. The official had examined about 25 witnesses.

29. Witness No.1 is the petitioner/mother of the victim. In her statement she has explained the circumstances which led to the custody, torture of the victim and the information finally received about this death. She was not permitted to see her son during the night of 21 .6.1993 and during the early hours of next morning she saw the victim. When the victim wanted her to relieve him of his pains, she was not allowed to go near or to touch him. She has also stated that her son was not suffering from any disease much less, heart disease.

30. Witness No.2 is the uncle of the victim and according to him, the victim was a person of good character, never took liquor, nor apprehended by the police any time.

31.Witness No.3 Maragatham, is an independent witness living at No.15, Gangai Amman Kovil Street. She has spoken to about the chasing of the victim by the police. She had recognised the victim as Wilson and according to her, victim's hands were tied behind and he was beaten repeatedly by lathi and iron pipe. When he fell down, the police asked him to get up and run away, he was unable to do so. Again he was beaten by the police with iron rod. When he was taken near the jeep, he fell down.

32. Witness No.4 is Nalini also resides at Door No.10, Gangai Amman Kovil Street. She has also clearly stated that at about midnight she came out of the house after hearing the shouting and Wilson was dragged from the bath-room in her house and he was beaten by the police with knife which was in the hands of the police. The victim was beaten on his knee resulting in bleeding injuries. He was also kicked and dragged outside and on the Street also he was beaten with lathi and iron rod. She has also positively stated that Wilson did not suffer from any bad habits and that there were also no building materials on in the street and Wilson could not have fallen on such building materials as stated by the police and that Wilson had died only due to the brutal attack on him by the police.

33. Witness No.5, Ranganayagi resides at Door No.13, Gangai Amman Kovil Street. She has also informed that Wilson was beaten brutally by the police on the Street and that she did not see any knife in the hands of Wilson. She has also stated that Wilson was a good boy and did not have any bad antecedents.

34. Witness No.6 is also a resident at Door No.11, Gangai Amman Kovil Street. He has also deposed that he saw Wilson being dragged on the street and he was beaten in front of his house also by the police, with iron rod and lathi. He was also kicked by the police and after tying his hands he was dragged up to Gangai Amman Temple. He has also spoken to the fact that Wilson was a decent boy and did not have any bad habits. When he was caught by the police, there was no knife in his hands. This witness has also stated that there were no building materials on the street.

35. Witness No.7 is Dhampachary, residing at Door No.8, Kandasamy Street. He has deposed that Wilson was a good person and he did not

suffer from any bad habits. He was informed by his mother that Wilson was beaten by the police. He went to the Royapettah Police Station. On being informed that Wilson had been taken to the hospital again he had been to the Police Station next day early morning along with the petitioner and found that the victim was lying on the verandah and he was bandaged. He was unable to speak much. Again at about 8.30 a.m. he went to the Police station, along with the Head Constable Vijayaraj and met the Inspector at the Police Station. He was advised to take bail for Wilson. Wilson was found to be reclining on the wall and his mouth was open,his hands and legs were without any movement. Head Constable Vijayaraj tried to wake up the victim and as he was motionless, the Inspector came rushing to the place and finding that the victim was motionless he was placed in a cycle rickshaw and taken to the Royapettah hospital and the Doctors at the Royapettah hospital informed that the Wilson had died.

36. Witness No.8 is also a resident of Door No.4, Gangai Amman Kovil Street and he has also deposed that he saw Wilson was being beaten by the police with iron rod and lathi and Wilson was unable to move from the place.

37. Witness No.9 is Vijayaraj, Head Constable of Ice House Police Station. He has stated that he was residing near Wilson's house and on 21.6.1993 at about 3.30 a.m. the petitioner informed him that Wilson was detained by the police. He immediately went to the Royapettah Police Station. Constable there had informed him that he may apply for bail and come and take Wilson with him, the next day. Again at 9.30 a.m. when he went to the Police Station, he found that Wilson was lying down without any movement and he was also unable to answer any question and hence Inspector was informed abou t the same, and the victim was taken to the hospital. He has also stated that Wilson was not enlisted either as a rowdy or as a KD.

38. Witness No.10 is Chandrasekaran, Sub Inspector, 7th respondent in the writ petition. He is one among the Police officials who had gone to catch hold of Wilson on the day of the occurrence. He has stated that on 21.6.1993, he and Head Constable Lewance, Constable Chandran, Constable Nagarajan and Ganesan went towards Gangai Amman Kovil Street and attempted to catch four individuals who were creating law and order problem at the junction of Royapettah High Road and Gangai Amman Kovil Street. On seeing the police, they tried to run away and the Constables chased them. A little later, Constables brought back one of them. He has further stated that he took the lathi from Nagarajan's hand and gave two beatings on Wilson. One of the Constables who had chased Wilson, had informed him that Wilson fell down at the corner of the street and the 'patta' knife in the possession of Wilson was removed from him. Thereafter, they have returned to the Police Station with Wilson and he had questioned Wilson. He has also stated that he has not seen any building materials in the place where Wilson was caught.

39. Witness No.11 is Leevance, who was Head Constable (Crimes), Royapettah Police Station. He has deposed that on the night of 21.6.199 3 pursuant to the directions of the Sub Inspector Chandrasekaran, he went to the junction of Gangai Amman Kovil Street and found four or five

persons with 'patta' knife. They chased them and Wilson was caught by the Constables and he has also stated that before he was taken inside the van he was beaten by the Constables. But he was not beaten when he was taken inside the van. He cannot say as to whether the other individuals who were with Wilson were arrested. He has stated that he did not beat Wilson in the Police Station.

40. Witness No.12 is Chandran, Constable (Crimes), Royapettah Police Station. He is also one of the Police personel who had gone to the junction at Royapettah High Road and apprehended Wilson. He has stated that Wilson was beaten by a Constable (Law & Order). He also joined in beating along with Leevance and Sub Inspector Chandrasekaran. Wilson was beaten only by lathi on his hands and legs. Thereafter he was taken to the Police Station. On the next day when he came to the Police Station, he found Wilson in the lock-up. He would also state that he cannot say as to whether other individuals who had accompanied Wilson were arrested or not. He has also stated that there were no building materials in the place where Wilson was apprehended and Wilson had never been brought to the Police at any earlier point of time.

41. Witness No.13 is Constable (L&O) Royapettah Police Station. He has spoken to about the facts relating to the chasing of the alleged four individuals and that one of them hid himself in a bath room and that he was having a long 'Aruval' in his hand. Therefore, he was surrounded by all the policemen and he was beaten by lathi. He had given five strokes while beating with his lathi. Thereafter the victim was taken to the Police Station and sent to the Hospital for treatment for the injuries. He has also stated there were no building materials on the spot where Wilson was caught.

42. Witness No.14 is another Constable attached to Royapettah Police Station. He has deposed about the facts relating to the chase of the individuals and of apprehending the victim. He would state that after he was beaten, the victim threw away the knife. He would further state that as the victim was in a drunken state he was sent to hospital for drunkenness certificate. The victim was sent to the hospital at 1.00 A.M. and that he was brought back from the hospital at about 3.15 a.m. When he was brought back he had bandages over his hand and legs. He left the Police Station at 7.00 A.M. and when he returned about 10.45 A.M. he was informed that the victim had been taken to the hospital and that he was dead. He has also deposed that on the spot of occurrence there were no building materials.
43. Witness No.15 is another Constable attached to the Royapettah Police Station. At about 1.00 A.M. on 21.6.199 when he was in waiting he and another Constable Mohan were directed by the Constable in charge of to take Wilson to the hospital. Accordingly both of them went to Royapettah hospital. He would also state that Wilson was in a drunken state. He would further state that Dr.Kadri gave treatment for the injuries sustained by the Victim and while Dr.Thirunavukkarasu gave drunkenness certificate. Thereafter, the victim was taken back to the Police Station.

44. Witness No.16 has also stated the same facts as Witness No.15.

45. Witness No.17 is also a Constable attached to the Royapettah Police Station. He was in the Police Station when the crew of a Transport Corporation bus had complained at the Police Station regarding some persons indulging in violence near Ajantha hotel and that Constables Ganesan, Nagarajan, Sub Inspector Chandrasekaran and Head Constable 1802 and Chandran left the Police Station at about 11.30 P.M.for apprehending the accused and returned at about 1.00 A.M. along with the victim. Even at that time there were no bleeding injuries on the victim. Thereafter his duties were over by 3.00 A.M. and he went to take rest. When he returned on the next day at 9.00 A.M. he found that both the legs of the victims were bandaged and that at about 10.00 a.m. when the victim complained pain over his legs, Inspector had directed Wilson to be taken to the hospital. The victim was taken in a stretcher in the Royapettah hospital and when they met the Doctor, the Doctor had expressed that he was already dead. Even while the body of the victim was taken in the stretcher the victim was unconscious.

46. Witness No.18 is also another Constable. He was on duty on 22.6.1993 between 7.00 A.M. and 11.00 A.M. He was informed in the Police Station about the incident during the night near Ajantha hotel and that the victim had been apprehended. Inspector Sivaraman (L & O) and Sub Inspector Anandraj enquired the victim only at about 9.45 A.M. The victim was complaining pain all over the body. Therefore, he was taken to the hospital.

47. He has also stated that Constable Rajasekaran took the victim to the hospital. He came to know about the death of the victim only after 2.00 p.m. when he returned from his home.

48. Witness No.19 is the Sub Inspector (Law & Order), Royapettah Police Station. He has stated that on 22.6.1993 at about 7.15 a.m. he saw the victim in lock-up and found that both the legs were bandaged. The Inspector came at 8.15 A.M. and enquired the victim. At about 10.00 A.M. Constable Kabali, informed that Wilson was complaining giddiness. Therefore, he was sent to the hospital in a rickshaw. Later he was informed by the Doctor that Wilson had died while on his way to the hospital.

49. Witness No.20 is the Inspector (Law & Order), Royapettah Police Station. He has stated that on 22.6.1993 at about 8.00 a.m. he came to the Police Station. He was informed by Anandraj about the incident relating to the previous day. He also enquired the victim and he told that he along with Venktesh, Ramkumar and Ravi were creating problems near Ajantha hotel and they were drunk. They were chased by the police and except himself the other three individuals had escaped. At about 10.00 A.M. the victim complained pain over his body and expressed giddiness and hence he was taken to the hospital. He had also inspected the spot where the victim was apprehended and he has also positively stated that there were building materials or iron rods at the place of occurrence.

50. Witness No.21 is Dr.Kadri, Casualty Medical officer of the Government Royapettah hospital. He has stated that on 22.6.1993 when he was on duty in the Accident Block, at about 2.15 A.M. the victim was brought to him by two police constables. They were in mufti and when he examined the

victim he had the following injuries:-
(1) 1 cm. Laceration left leg:
(2) small lacerations left ankle and right leg.

(3) A few linear contusions on the both arms. The general condition of the patient was good. He was limping and walking by himself. He was answering to questions well.
After referring to the X-ray reports he had also stated that the linear contusion on the arms could have been caused due to assault with lathi.

51. Witness No.22 is Dr.Ezhilrajan, Orthopaedic Surgeon, Royapettah Hospital. On 22.6.1993 at about 2.30 a.m. the patient was brought to him and the patient was referred to the Casualty Medical Officer. As he was complaining of pain and there was swelling on his right hand he was examined. He was found to be conscious and he was answering all questions and his general condition was stable. He had multiple abrasions on the legs and deep abrasion on the outer side of the right ankle. He was limping and walking with the support of the Wall. Clinical examination showed that tenderness on the ankle joint and Xray revealed ankle fracture. Hence plaster of Paris was given. He has further stated that the attenders who had accompanied the victim were not willing to admit the victim as inpatient. Therefore, he was given drugs and treated as outpatient. He was asked to come on Wednesday which was the out-patient day for review.

52. Witness No.23 is Dr.Thirunavukkarasu is the Casualty Medical Officer attached to the hospital. He was on duty on 21.6.1993 from 2.0 0 p.m. to 22.6.1993 8.00 a.m. The victim was brought to him with a police memo by two Constables. The time was 3.15 a.m. and he had issued a certificate that the victim has taken liquor. He examined the victim and found that he was conscious and he was answering to his questions and his breath was smelling of alcohol. Therefore, he asked the Medical Officer to issue a drunkenness certificate to the effect that the victim had consumed liquor but was not under its influence. The victim has stated that he was not willi ng to give blood or urine for examination. He had injuries for which he was already taken to the Accident Block Casualty and was given treatment by the Casualty Medical Officer.

53. Witness No.24 is Dr.Loganathan, Casualty Medical Officer has spoken to the fact of the victim having been brought to the Casualty at about 10.25 A.M. on 22.6.1993 and on examination it was found that there was no pulse and blood pressure. Both pupils were fixed and dilated. There was

no heart sound and hence the victim was declared as dead. He had made entry in the Accident Register as the victim who was brought to the hospital, was declared as dead.

54. Witness No.25 is Dr.Diwakar, Surgeon and Professor of Forensic Medicines and he has stated that he received a requisition from the P.A. to the Additional District Magistrate to conduct autopsy over the body of the deceased Wilson on 22.6.1993 at about 4.10 p.m. He commenced post-mortem at 4.20 P.M. on the same day and found that the body of the

victim was a well developed and moderately nourished body of an adult male. He has spoken to the various injuries sustained by the victim. He would further state that the deceased would have died due to the anoxic heart due to hyper trophy with multiple injuries. He has also stated that Injury No.2-(a) to 2(z) would have been caused by some blunt weapons like lathis or iron rods. All the injuries would have been caused about 6 to 12 hours prior to the death of the victim. The Doctor has further stated that there was narrowing of the valve which leads to concentric hypertrophy of the left ventricle. The deceased would have died due to indirect coronary insufficiency due to aortic stenosis leading to hypertrophy of the heart. In this case, the indirect coronary insufficiency would be due to multiple injuries sustained by the deceased and also to its attendant pain and emotional factors. Injuries sustained by the victim aggravated the aortic stenosis and hypertrophy leading to his death.

55. The Enquiring Officer after having analysed the evidence of 25 witnesses as above, concluded that police ought to have obtained a wound certificate from the Government Doctor on duty. That has not been complied with in this case. He had also taken note of the fact that Nalini was an independent witness and resident of Gangai Amman Kovil Lane. She has spoken to the facts that there was no building material. Even according to the police, witnesses, there were no building materials at the scene. The Enquiring Officer himself conducted a spot inspection and found that there were no building materials in the concerned spot. With the result, the Enquiry Officer concluded that the version of the police in the F.I.R. that the victim had fallen down on some iron materials and sustained injuries is a bundle of lies and false to the core. Therefore, he concluded that there was sufficient evidence to show that the victim had sustained multiple injuries only due to the ruthless action of the police.

56. As regards the other facts of apprehending the victim and the injuries sustained by the victim, the Enquiry Officer has stated that he was inclined to believe the independent testimony of Maragatham and Nalini and that their evidence was also confirmed by Dr.S.Diwakar. The Enquiry Officer also held that the victim was subjected to brutal attack and heinously perpetrated on him by five named persons namely, (1) Chandrasekaran (2) Leavance, (3) Chandran, (4) Ganesan and (5) Nagarajan. He has also found that the police has destroyed the dress worn by the victim. If the said dress had been produced it would have definitely betrayed the police. Therefore, the police have suppressed the production of the dress which were worn by the victim. He further found that the police have given false evidence and therefore they had committed offence under Section 191 I.P.C. They have caused disappearance of Wilson's dress. Hence they were also found guilty under Section 201 I.P.C. The Enquiry Officer has also observed that the nature of the charge being murder, would require testimony of two independent witnesses and that the two independent witnesses in this case are the two ladies. In fact, the Enquiry Officer had rightly apprehended that the police will have no qualms and that in all probability they will succumb to Police threats and intimidation and will not come forward to give their testimony later.

57. In the result, the Enquiry Officer recommended to the department to punish the police personnel by initiating departmental action. He also recommended suitable punishment for Dr.Thirunavukkarasu for having issued a drunkenness certificate while actually the victim did not consume any alcohol as could be seen from the Chemical Examiner' s report. Therefore, Enquiring Officer concluded that Dr. Thirunavukkarasu also had issued false certificate of drunkenness in favour of the police. He also directed the Government to suitably instruct to take appropriate action and inflict deterrent punishment against him for having issued a false certificate. He also recommended monetary compensation should be awarded to the mother of the victim.

58. The evidence thus recorded by the Enquiring Authority under Clause 145 P.S.O. reflects the immediate and spontaneous materials gathered at the earliest possible point of time and immediately after the incident. The findings recorded by the Officer who is an independent Government Officer is also based on his assessment of the demeanour o the witnesses. He has rightly concluded that the named individuals had indulged in brutal attacks "in a most bestial manner with impunity". He has further stated that the police had also indulged in suppressing the materials and have not produced the dress which was worn by the victim, which would have exposed the real facts and that they have deliberately caused disappearance of the victim's dress. After taking into account the fact that the Chemical Examiner's report did not support the claim of the Police that the victim had consumed alcohol, he had also come to the definite conclusion that the drunkenness certificates issued by Dr.Thirunavukkarasu as false. He had also recommended action against the said Doctor.

59. Even ignoring the finding of the Enquiry Officer, I have also independently considered the issue both on the materials made available through the enquiry under P.S.O. and the affidavit filed before this Court, Counter-affidavit filed on behalf of the respondents and the arguments before this Court. The fact that victim had sustained multiple injuries is not denied. The only explanation which is sought to be assigned for the injuries on the body of the victim is that while he was being chased, he fell down on certain metal scrap/building materials which were allegedly heaped on the road where he was apprehended. Apart from the fact that all the public witnesses have totally denied the same, it is pertinent to note that even the police personnel themselves have agreed that there was no such heap of building materials. Witnesses Nos.12, 13, 14 and 20 who are police personnel have frankly admitted that there were no building materials on the spot. Witness Nos.13 and 14 are none other than respondents 11 and 10 respectively. Witness No.20 is the Inspector of Law and Order attached to the Royapettah Police Station. Therefore, there being no basis for the only explanation which is given for the injuries on the body of the petitioner's son being found to be false, the burden is heavy on the police to show as to how the victim had sustained multiple injuries which ultimately led to his death.

60. The story of the victim of having fallen over a heap of building materials being proved to be false even according to the statement of police personnel themselves, the burden to explain the innumerable injuries on

the victim is very heavy on the respondents. There is no other explanation from the respondents other than the story that the victim had fallen over a heap of building materials, which is found to be totally false. There is evidence of the victim having been beaten on the road while he was allegedly indulging in violent behaviour in public. This is not disputed by either side. The use of minimum force by the police while apprehending a person who is allegedly creating law and order problem is inevitable and no police force can function effectively if such a right is not given to them. It would of course, depend upon the actual facts. We do come across scenes of members of pubic being beaten unnecessarily even when there is no violent behaviour and when there is no resistance from being arrested. Such use of indiscriminate and brutal force is certainly deplorable. But in this case, for the sake of discussion we will assume that the conduct of the victim having indulged in violent behaviour and was trying to run away is true. If so, the use of minimum force on him to bring him under control and to take him into custody would be justified. We will for a moment ignore the evidence of the private individuals who have stated that the victim was mercilessly beaten black and blue even while he was pleading for mercy and cried that he did not do anything wrong. I will also accept the evidence of the police personnel which is to the effect that four or five of them had to indulge in lathi charge against the victim and that each of them had given three or four beatings only. Thereafter, he is taken to the police station. From there he was taken to the hospital at 2.00 A.M. and given treatment by Dr. Khadri. He has seen the following injuries:-

(i) 1 cm. Laceration on left leg.

(ii) small laceration on the left ankle and right leg.

(iii) few linear contusion on both arms.

According to the Doctor, he was limping while walking and his general condition was good and was answering the questions well. He would state that the injuries could have been caused due to assault with lathis. Then the Doctor took an X-ray and referred the case to the duty Assistant Orthopaedic Surgeon who examined him at 2.30 A.M. The Orthopaedic surgeon recorded that though the victim's general condition was stable, he found that the right hand of the victim was swolen and he had multiple abrasions on the legs and deep abrasions on the right ankle and clinical examination revealed tenderness of the ankle joint. The X-Ray revealed ankle fracture. Therefore, plaster of paris was fixed and the victim was also given drugs.

61. Thus the statement of the said two Doctors disclose that the first time when the victim was brought to the hospital at about 2.15 a.m., he had only few abrasions and lacerations on the legs and hands and there was also a fracture of the right ankle. Thereafter he was discharged and taken to the police station and was again brought to the hospital only as a dead-body at about 10.00 A.M. next day.

62. The nature and number of injuries as recorded in the postmortem report reveals 14 abrasions, 26 patterned abrasions with bruising with beneath, a lacerated sutured wound of 4 c.m. over left shin and another lacerated sutured wound of 3 c.m. Over the left ankle. The variation between the nature and number of injuries between the two stages would clearly suggest that beating should have continued in the police station also even after he was taken back to the police station from the hospital. Apart from the

variation in the number of injuries, even the details relating to the actual spots on the body of the victim where the various injuries were found in the postmortem examination, would also suggest that the victim should have been subjected to renewed beating again at the police station after he was discharged from the hospital. The statement of both the doctors Witness Nos.21 and 22 who had given treatment to the victim when he was taken to the hospital at 2.00 a.m., the Casualty Medical Officer and the Orthopaedic Surgeon respectively reveal that he had only few lacerations and abrasions or linear contusions on his hands and legs and also the fracture of the right ankle. No other parts of the body have been mentioned of having sustained any injury. But the list of injuries shown in the post-mortem report reveal that the victim had sustained injuries on several other parts of his body. Abrasions were found on the neck, right shoulder, left arm pit, left shoulder, left chest and above the right knee and also four injuries on the right thigh, etc. These facts would clearly suggest that beatings should have continued again even after he was taken back from the hospital to the Police Station, after he was given treatment at the hospital. It is further pertinent to note that the Orthopaedic Surgeon had also positively stated that the attenders who had accompanied the victim (Constable Gurunathan and Mohan) were not willing for admitting the patient and therefore, the victim had to be treated as outpatient only because of the attitude of the constables. Even though the learned counsel for the petitioner had pointed out the variation in the number and nature of injuries as between two stages, there is absolutely no explanation on the side of the party/respondents. In fact even according to the police, the nature of injuries sustained by the victim at the time of arrest were only minor injuries (Paragraph No.3 of the counter of respondents 7 to 11).

63. In STATE OF M.P. v. SHYAMSUNDER TRIVEDI (1995 (4) S.C.C., 262), the Supreme Court held that police officials alone can explain the circumstances in which a person in their custody had died. The relevant observations are as follows:

"The High Court erroneously overlooked the ground reality that rarely in cases of police torture or custodial death, direct ocular evidence of the complicity of the police personnel would be available, when it observed that 'direct' evidence about the complicity of these respondents was not available. Generally speaking, it would be police officials alone who can only explain the circumstances in which a person in their custody had died. Bound as they are by the ties of brotherhood, it is not unknown that the police personnel prefer to remain silent and more often than not even pervert the truth to save their colleagues, and the present case is an apt illustration, as to how one after the other police witnesses feigned ignorance about the whole matter.

17. ..... The exaggerated adherence to and insistence upon the establishment of proof beyond every reasonable doubt, by the prosecution, ignoring the ground realities, the fact-situations and the peculiar circumstances of a given case, as in the present case, often results in miscarriage of justice and makes the justice delivery system a suspect. In the ultimate analysis the society suffers and a criminal gets encouraged. Tortures in police custody, which of late are on the increase, receive encouragement by this type of an unrealistic approach of the courts because it reinforces the belief in the mind of the police that no harm would come to

them, if an odd prisoner dies in the lock-up, because there would hardly be any evidence available to the prosecution to directly implicate them with the torture. The Courts must not lose sight of the fact that death in police custody is perhaps one of the worst kind of crimes in a civilised society, governed by the rule of law and poses a serious threat to an orderly civilised society. Torture in custody flouts the basic rights of the citizens recognised by the Indian Constitution and is an affront to human dignity. Police excesses and the maltreatment of detainees/undertrial prisoners or suspects tarnishes the image of any civilised nation and encourages the men in 'Khaki' to consider themselves to be above the law and sometimes even to become law unto themselves. Unless stern measures are taken to check the malady, the foundations of the criminal justice delivery system would be shaken and the civilization itself would risk the consequence of heading towards perishing. The courts must, therefore, deal with such cases in a realistic manner and with the sensitivity which they deserve, otherwise the common man may lose faith in the judiciary itself, which will be a sad day."

64. Assuming that the victim among others had created any law and order problem, even so when once the victim had been caught and brought under control, there was absolutely no need to have beaten him indiscriminately even while he was arrested. There is clear evidence to show that even when the victim was not putting up any resistance and was actually pleading for mercy and was crying that he had not committed any misbehaviour and that he was innocent, he was beaten indiscriminately with lathis and was kicked. The power given to the police to use minimum force to bring the offenders under control or to maintain law and order does not include sadistic and savage behaviour. The observation by the P.A. to the Collector under P.S.O.145 that the police had really murdered the victim is therefore, not at all an exaggeration. In fact, the Enquiry Officer had very judiciously analysed the evidence very correctly. He had not given any credence to the evidence of the mother and the uncle of the victim, Witness Nos.1 and 2 as interested witnesses and he has based his conclusions only on the statement of the other independent witnesses.

65. Therefore, in the absence of any satisfactory explanation regarding the injuries sustained by the victim, I have no hesitation in coming to the conclusion that the victim had sustained numerous grievous injuries and that his death was only due to the custodial violence by the police.

66. The contention on the part of the respondents as though the victim was suffering from a heart disease and therefore, the death was not due to any ill-treatment, is to be stated only to be rejected as baseless and irresponsible. On the side of the victim it is specifically stated without any contradiction that the victim was a normal, hale and healthy youth of 24 years and had never faced any health problem. The description of the heart as "anoxic heart" is attempted to be taken advantage by the respondents. The final opinion of the Doctor is given that the deceased would appear to have died of anoxic heart, due to his hyper trophy with multiple injuries.

67. I am unable to attach any importance to the said description of the condition as anoxic heart. Firstly considering the positive evidence on the side of the victim to the effect that the petitioner had never suffered from any complaint and that he was a hale and healthy person, it cannot be ruled out that the said statement regarding the condition of the heart may not be correct. Unfortunately,in our country it is not unusual that medical evidence is tailored to suit the requirements of the prosecution, more so in this case, being one of custodial death in which a group of police personnel are placed in a very tight terminal corner. How a false certificate was issued by one of the doctors to the effect that the victim was intoxicated, has already been dealt with. Secondly, assuming that description of the condition of the victim as anoxic heart is correct, the very same Doctor had expressed that the victim would have died only due to coronary insufficiency and due to aortic stenosis and also of direct coronary insufficiency due to multiple injuries sustained by the deceased and also due to attendant pain and emotional factors. Therefore, the root cause is only the multiple injuries, pain and shock.

68. In our country, imperfect health is due to several factors such as malnutrition, hereditary factors, marriage among close relations, polluted environment etc., to mention a few which contributes to certain adverse health symptoms. But such factors are only marginal. The Doctor himself has stated that coronary insufficiency was due to multiple injuries sustained by the deceased and also due to the attendant pain and emotional factors. The deficiency even if true is only marginal. Rarely one would be able to satisfy the parameters of all the vital organs to the text book perfection. While explaining " anoxic heart", the Professor of Forensic Medicine (Witness No.25) has stated that the victim's aortic value measured six centimetres as against the normal size of seven to nine centimetres. The variation is therefore, only marginal and inconsequential. To be endowed with perfect condition of all vital organs may be common but the converse is also equally true. Marginal congenital defects in vital organs are also common. But that is no reason say that the death was only due to the said feature. In a criminal case, it would be unreasonable to say that the victim could have been saved if proper medical treatment had been given and that the victim had no business to die. The Doctor had positively stated that the death was due to coronary insufficiency due to multiple injuries and also due to its attendant pain and emotional factors. Therefore, the attempt on the part of the respondents to hang on the description of the heart condition of the victim is an excuse invented by the respondents in desperation.

69. The overall conduct of the police personnel as mentioned below would reveal absolute lack of bona fides in them in having handled this case and that the series of their conduct is an exhibition of absolute inhuman conduct and sadism, lacks bona fides for reasons inter alia as stated below.

(i) Though it is made to appear that the victim was indulging in violent behaviour along with three others, absolutely no follow-up action had at all been taken on the complaint regarding the incident which lead to the arrest of Wilson. The other three individuals who were stated to have escaped

the chase, were never brought to action and admittedly there was no further follow-up of the complaint at all. Certainly for the kind of treatment given t o the victim, he would have definitely given the particulars relating to the other individuals and in fact the statement of the Inspector himself is to the effect that the victim gave the names of the other three individuals. Nor could it be stated that the police could not have arrested the others concerned in the incident. It is also not the case of the police that the victim had refused to disclose the names of the other individuals and in fact he had disclosed the names. Therefore, the question which naturally arises is why there has been absolutely no follow-up action. This casts considerable doubt on the very involvement of the victim much less the incident which is said to have taken place namely, the violent behaviour of the victim and others of having really created any law and order situation. It is also seen that the crew of the Transport Corporation had not been produced in enquiry under Clause 145 of the P.S.O., which the Police could have easily done.

(ii) It is also pertinent to note that though the victim was alleged to have been carrying a knife with him and that it was seized from him, it is admitted in the F.I.R. itself that it was seized without any Mahazar. The reason given in the F.I.R. is that no individual was around the place is against their own statement regarding the circumstances and the background in which victim was apprehended and that the victim and others were creating law and order problem much to the scare of the public and lot of people around. This feature coupled with contradiction in the description of the weapon as "Aruval" by few witnesses and as "knife" by other witnesses, both being Police witness and it is curious that they do not know the difference between "Aruval" and "knife".

(iii) As against the Doctor's instructions the Constables had refused to admit him as inpatient in spite of the fact that the victim had sustained various and multiple injuries, and he was unable to walk and had also sustained a fracture injury. Even assuming that the idea was not for renewing the torture, it shows the respondents in a very bad light of negligence and absolute lack of human feelings.

(iv) Not permitting the mother of the victim even to console the victim when he was wailing with pain when the mother came to police station, an hour or two earlier to his death.

(v) Obtaining false drunkenness certificate which indicates clear mala fides on the part of the police personnel to implicate the victim as though he was a bad character. The fact that the respondents should have stooped to create false evidence, is proof of lack of bona fides.

(vi) The non-production the of the dress belonging to the victim before the P.A. to the Collector. No such material had been produced even before the Criminal Court.

(vii) The only theory advanced by the respondents for the injuries on the body of the victim that he had fallen on the metalic scrap/building materials is found to be absolutely false. Not only the P.A. to the Collector has inspected the place on the very same day of the victim's death on 22.6.1993 and found that there was no such heap of building materials, but also the evidence of some of the police personnel themselves show that the said story was false. Witness No.10 (7th respondent) has stated that he had not seen any such heap of building materials even though he is one of the policemen who was on the spot when the victim was arrested. Witness Nos.12, 13, (11th

respondent), 14 (10th respondent) also have deposed that there were no building materials. Witness No.20, the Inspector of Police (L & O), has also stated that on the same day when he inspected the spot he did not see any building materials. Therefore, the story of the building materials and the victim having fallen over the building materials is not only false and motivated, but also is sufficient to expose that the concerned police officials have chosen to give false evidence in support of a false reason to explain away the injuries on the petitioner.

(viii) The statement of the private witnesses that the victim was not involved in any previous complaint and that he had never been apprehended for any misbehaviour is admitted by the police Witnesses Nos.1 0 and 13). This fact coupled with the glaring feature that the case against the victim and three others did not progress at all, raise considerable doubt about the very incident which led to the arrest of the victim. It is true that at about midnight of 21.6.1993, the victim was beaten and arrested at the junction of Gangai Amman Kovil street. But the actual facts and circumstances under which any incident took place leading to the arrest of the victim have not at all been brought to the light by the police. There was no attempt to produce any member of the public who are stated to have been present where the victim and others are alleged to have caused law and order problem, nor the crew of the bus who are stated to have given the complaint.

(ix) Non furnishing of Post-mortem certificate in spite of repeated demands reveal spiteful and unreasonable attitude.

70. The aforesaid discussion clearly establishes that the gruesome death of the victim was the result of the brutal and inhuman attack on the victim when he was apprehended and arrested on the midnight of 21.6.1993 and thereafter also he had been subjected to torture at the police station. As stated earlier, the first time when he was taken to the hospital except for the few injuries and the fracture of the ankle which made him to limp, his condition was stated to be normal and stable and was answering all the questions in a normal manner. There is absolutely no explanation as to how his condition worsened with many and fresh unexplained injuries after he was taken back to the Police Station, resulting in his death. I have no doubt in my mind that he had died in the Police Station itself and that the story that he was taken to the hospital immediately after he complained giddiness is false. The hospital is only a few yards from the police station and the Doctor who attended on him had stated that he was already dead. Witness No.9 Head Constable of Ice House Police Station has stated that at 9.45 a.m. when he saw the victim he did not respond to any question and there was no breathing (ngr;R K:r;R ,y;yhky; ,Ue;jhh;) and that on his informing the Inspector, the Inspector directed the victim to be taken to the hospital. Though he also adds that the victim was unconscious, his statement that there was no breathing, is significant. This evidence also runs contra to the evidence of Witness No.18, Grade I, Constable that the victim was shouting between 9.45 a.m. and 10.00 a.m. complaining pain. He has also stated that the victim was questioned by Anandraj, Sub Inspector and Sivaraman, Inspector between 7.30 a.m. and 8.00 a.m. The fact that the victim had been enquired during that time is also admitted by both of them (Witness Nos.19 and 20). What sort of questioning should have taken place could be very well inferred by the subsequent fact that the victim having become unconscious by 9.30 a.m.

or 9.45 a.m.

71. As a result of the above analysis, I have no hesitation in accepting the reasonings and the findings rendered by the P.A. to the Collector. He has rightly dealt with the evidence in a judicious manner. After eschewing the evidence of victim's mother and uncle as interested witnesses, he has characterised the evidence of Maragatham and Nalini as independent and reliable witnesses. The evidence of the Doctor who conducted post-mortem also confirms that the death was ultimately due to the injuries. I have also independently considered the evidence and I find no reasons to differ from the findings in the enquiry under Clause 145 of the P.S.O. As stated earlier in the case of custodial death, the Supreme Court had held in 1995 (4) S.C.C., 262), that the police officials alone can explain the circumstances in which a person in their custody had died.

72. The attempt on the part of the respondents to rely on the acquittal in the Criminal proceedings is of no consequence for reasons already stated. The P.A. to the Collector had rightly foreseen the course of the events and after referring to the evidence of two independent witnesses who are ladies, he has proceeded further to observe that the police will have no qualms in intimidating the poor hapless ladies and that in all probability they will succumb to police threat and intimidation and may not come forward to give their testimony later. His fears had come true. Therefore, no importance can be attached to the outcome of the criminal proceedings. For coming to the conclusion to the contra, I have relied on the statements made before the competent authority spontaneously and immediately after the occurrence on the very next day itself within 24 hours of the incident. The manner in which the departmental proceedings had concluded also leaves much to be said. For a grave and gruesome crime of killing an individual, the delinquents were let of with a minor punishment. Persons who had indulged in causing grave injuries resulting in death are let off by a punishment of reduction in pay by two stages which is nothing but a mockery of disciplinary proceedings. If even high ranking Police officials are indulgent towards such gruesome conduct of their subordinates, it will certainly not help the Police force to regain their status as friend of the public. Even the ridiculously low punishment is set aside by the Tribunal only on the ground that they were found not guilty in the criminal proceedings. It is settled proposition of law that the evidence and the findings before the Criminal Court will not be conclusive for taking disciplinary action. For reasons best known to the respondents no further proceedings were taken against the order of the Tribunal. Such failure to pursue further action and the result of the proceedings before the Criminal Court cannot be an impediment for this Court to grant proper relief to the hapless mother of the victim in this proceeding, when there is abundant evidence recorded immediately after the incident.

73. It is also pertinent to note that the party/respondents against whom specific allegations have been made have not chosen to file independent counter affidavits denying such contentions. On the other hand, it is only the 7th respondent who files a common counteraffidavit for respondents 7 to 11. The specific allegations relating to the circumstances which led to the death of the victim, are not properly dealt with, in the said

common counter-affidavit. In the short counter affidavit filed by them, their version of what happened on the night of 21.6.1993 alone is dealt with in detail and as regards the other allegations, the counter affidavit contains only formal denials without taking efforts to place all the facts before the Court as to what exactly happened in the Police Station, nature of injuries, nature of treatment given to the victim etc. The manner in which the counter has been filed only exposes the casual manner in which serious issue of custodial death is dealt with. In fact after the arrest of the victim the 7th respondent had gone back to his house and returned only later and he is not the proper person to speak about many of the allegations contained in the affidavit. Such is the indifferent manner in which the counter is filed in a serious case of this type.

74. On behalf of the respondents, a feeble attempt was made to the effect that in a proceeding under Article 226 of the Constitution of India, this Court will not be inclined to award any compensation and that the parties should be directed to the Civil Court. It is true that in matters relating to award of compensation, which would involve evidence to be adduced by both sides, parties are generally directed to approach the Civil Court. But in the case of custodial deaths, this Court and the Supreme Court have repeatedly held that under Articles 32 and 226 of the Constitution of India, the Supreme Court and the High Courts would be justified in awarding compensation vide the following judgments:-
(i) NILABATI BEHERA v. STATE OF ORISSA (A.I.R.1993 S.C., 1960).
(ii) D.K.BASU v. STATE OF W.B. (A.I.R.1997 S.C., 610).
(iii) PEOPLE'S UNION FOR CIVIL LIBERTIES v. UNION OF INDIA (A.I.R.19 97 S.C., 1203).

75. Now coming to the quantum of compensation, it is true that the petitioner had been paid a sum of Rs.50,000/- vide G.O.Ms.No.759 Public Department, dated 19.8.1994. It is pertinent to note that subsequently even during the pendency of this writ petition, in G.O.Ms.No.15 3, Public Department, dated 31.1.1998, quantum of relief has been increased to Rs.1,00,000/- from Rs.50,000/- in the case of death due to police torture. In the writ petition, the petitioner has sought for a sum of Rs.3,00,000/- as compensation. Having regard to the age of the boy (24 years) and the uncontradicted claim that he was doing screen printing and earning about Rs.2,000/- per month, and the fact that the petitioner had lost her only son, fixing a sum of Rs.2,50,000/- as compensation will be reasonable. Even in Motor Accident Claims where the death is due only to the accident or at worst due to the rashness and negligence, such amounts or even more are fixed as compensation. Here is a case where the victim who is admittedly not a rowdy and had never been to the Police Station before, has been done to death by inhuman and sadistic action by the party/respondents. Calculated on the basis of the said amount as due in June, 1993, after 11 years at the rate of 6 per cent per annum, the total amount payable will be Rs.4,15,000/-. By adding a sum of Rs.15,000/- towards funeral and other incidental expenses, the total amount payable as on date inclusive of the interest amount can be reasonably fixed at Rs.4,30,000/-. Deducting a sum of Rs.50,000/- which was already paid, the respondents are directed to pay a total sum of Rs.3,80,000/- to the

petitioner within a period of six weeks from the date of receipt of a copy of this order failing which interest shall be payable at the rate of 18 per cent per annum, from this date. The writ petition is allowed accordingly. No costs.

After the delivery of the Order, the learned Government Pleader seeks for directions to enable the Government to recover the amounts from the party-respondents.

2. It is made clear that the initial responsibility to pay the amounts to the petitioner is on the first respondent and it is open to them to recover the same from the party-respondents in accordance with law.

Index: Yes.
Internet :Yes.

sai/-

To
1. The State of Tamil Nadu,
represented by its Secretary,
Home Department,
Fort St. George,
Madras 600 009.

2. The Director General of Police,
D.G.P.Office,
Mylapore,
Madras 600 004.

3. The Collector of Madras,
Chepauk,
Madras-600 005.

4. The Personal Assistant (General)
to the Collector of Madras,
Chepauk,
Madras-600 005.

5. The Commissioner of Police,
Egmore,
Madras-600 008.

6. The Inspector of Police,
E-2, Royapettah Police Station,
Madras-600 014.